

REMARKS

Claims 1-40 are pending and under consideration. With this Amendment, Claims 1-40 are being amended. Thus, after entry of this Amendment, Claims 1-40 are pending and under consideration. The amendments of the claims and the various rejections raised in the Office Action are discussed in more detail below.

The Amendments of the Claims

In the above-referenced application, the Office Action mailed on Aug. 23, 2007, has rejected claims 1-40. More particularly and in accordance with the item numbering therein, the Office Action has:

In Item 1, recognized the request for continued examination and withdrawn the finality of the previous office action;

In Items 2-4, cited the Sireau reference (U.S. Patent No. 7,206,762) as showing a motivation to combine the fields of wagering and financial trading systems. Additionally, the Office Action has alleged that the claimed language lends itself to wagering and/or betting systems, while citing Applicant's specification at page 1 for support;

In Item 5, alleged that the Examiner is not using improper hindsight in the Examiner's previous conclusion of obviousness;

In Items 6-8, rejected independent claims 1 and 21 under 35 U.S.C. 103(a) as being unpatentable over Rossides (U.S. Patent No. 5,749,785) in view of Lange (U.S. Patent No. 6,321,212);

In Items 9f-m, rejected claims 2-9 and 22-29, respectively, in items 9m(i)-(iv), rejected claims 10-13 and 30-33, respectively, in item 9n, rejected claims 14 and 34, in items 9n(v)-(ix) rejected claims 15-19 and 35-39, respectively, and in item 9o, rejected claims 20 and 40, all apparently as being disclosed by Lange; and

In Item 10, proposes a motivation to combine Lange and Rossides.

Applicant respectfully submits that: (i) the newly cited Sireau reference fails to provide a motivation to combine the fields of wagering and financial trading systems; (ii) the proposed combination

of Lange and Rossides would not have been made by one of ordinary skill in the art; and that (iii) the proposed combination of Lange and Rossides does not render the claims unpatentable.

The Sireau reference fails to provide motivation to combine the fields of wagering and financial trading systems

In accord with the Sireau reference the field of wagering is characterized by a bet whose payoff is determined by the setting of odds. According to Rossides, a bet has four elements, (i) a bet statement, (ii) the sides, (iii) the stakes, and (iv) the payoff odds. Rossides, Col. 6, lines 30-62; Previous Office Action Response, page [refer to previous office action section titled Rossides Reference]. Generally, a bet or wager operates according to the following rules: A bettor takes a position that the bet statement will be either true or false; when the truth of the bet statement is determined, if the bettor's position was in accord with the bet statement, he receives a pay out according to specified pay off odds. In the case of the Sireau reference, the truth or falsity of the bet statement is determined by a change in a financial instrument and the pay-off odds are set by a bookmaker or a computer system that performs the same function of a bookmaker - that of setting the odds. Sireau, Col. 3, lines 25-28, Col. 6, lines 3-7. In the example offered by the Rossides reference, the bet statement is "the consumer price index will rise over 2% in 1995 according to the U.S. Commerce Department." The odds are set at 3-1 (against), 25%, the side picked is True, and the Stake is \$100. Rossides, Col. 7, lines 56-63. If the bet statement turns out to be true, then the bettor receives \$300 plus his stake of \$100, for a total of \$400. Importantly, the bettor puts his stake at risk being cognizant of the odds that have been specified for the bet. Thus, the Sireau reference discloses a betting or wagering system just as does Rossides and is cumulative to Rossides. In contrast, in a financial trading system, an investor does not make an investment whose payoff is determined by the setting of specific payoff odds. The investor makes an investment based on his expectation about the movement of the underlying commodity, even if he does not hold that commodity. There are no specified pay off odds quoted for him to make the investment and no bookmaker who sets those odds. Therefore, because both the Sireau and Rossides references are cumulative in that they only describe a wagering or betting system, neither reference provides or can provide any motivation to combine the fields of wagering and financial trading systems, as alleged.

One of skill in the art would not have made the proposed combination of Lange and Rossides

One of skill in the art, understanding the difference between wagering and financial trading would not have looked to wagering art to make or modify a financial trading system. A person of skill in the art would not have had any motivation to alter a financial trading system to introduce pay off odds, an

alteration that might convert the financial trading system into a gambling system that might be illegal in some jurisdictions.

Furthermore, the payout system in Lange is not compatible with the odds system of Rossides. The investment return system in Lange is based on the total amount that is invested according to a DRF. Lange, Col. 24, line 54. The payoff for a bettor in Rossides is based on the specified payoff odds. One of skill in the art would have to have decided which one of these systems to use, as they are mutually exclusive, and thus cannot be combined. Therefore, one of skill in the art would not have made the proposed combination.

The proposed combination of Lange and Rossides does not render the claims unpatentable

Assuming that a combination of Lange with Rossides were possible (which it is not), the result might have been a system that uses specified pay-off odds to determine investment returns. If such a combination were possible, the combination would not have been the system of the present invention. The present invention does not employ specified payoff odds to determine investment returns. Instead, the system of the present invention pays “the frozen first and second investor funds to one of the first and second investors upon expiration of the contract,” as recited in claim 1. Therefore, the proposed combination does not meet the limitations of claim 1.

Lange does not teach or describe the limitations of claims 2, 3, 5, 8, and 13, and 22, 23, 25, 28, and 33

Lange does not teach or describe the limitations of claims 2, 3, 5, 8 and 13 at least because Lange fails to teach or describe the limitations of claim 1 from which these claims depend or ultimately depend. Lange does not teach or describe the limitations of claims 22, 23, 25, 28 and 33 at least because Lange fails to teach or describe the limitations of claim 21 from which these claims depend or ultimately depend.

Claims 3-4 and 23-24

The Office Action has cited Lange’s Abstract, Col. 1-5 and Col. 11-12 in support of the allegation that the Lange reference teaches the limitations of claim 3. However, Lange does not teach or describe the limitation “wherein the contract specifies an expiration time, a first expected direction and first dollars per tick associated with the first investor, and second expected direction and second dollars per tick associated with the second investor,” recited therein. Instead, in Lange, a demand reallocation function (DRF) determines the payout to each investment. The DRF adjusts returns based on variations in amounts invested

in each state. This feature of Lange does not describe the present invention. The present invention has no DRF and no amounts invested in each state. Therefore, Lange does not teach or describe the limitations of claim 3. Furthermore, claim 4 is allowable at least because claim 3 on which it depends is allowable. The same argument holds for claims 23 and 24.

Claims 5-7 and 25-27

The Office Action has cited the same portion of Lange in support of the allegation that Lange teaches the limitations of claim 5. However, Lange fails to teach or describe the limitation “wherein the contract specifies an expiration date, a first target price range associated with the first investor, a second target price range associated with the second investor and a fixed lump-sum payment,” recited therein. Neither the cited portion nor the portion in Lange on range bets has anything to do with price ranges. The range bets in Lange are bets based on a range of odds. Lange specifically states “In a range bet, the Placer states a range of probabilities from p1 to p2.” Lange, Col. 15, lines 59-60. Therefore, Lange fails to teach or describe the limitations of claim 5. Furthermore, claims 6-7 are allowable at least because claim 5 from which they depend is allowable. The same argument holds for claims 25-27.

The Office Action has cited the same portion of Lange in support of the allegation that Lange teaches the limitations of claim 8. Again, Lange fails to teach or describe the limitation “wherein the contract specifies an expiration date, a price range bounded by an upper cap associated with the first investor and a lower cap associated with the second investor and fixed lump-sum payment,” as recited therein. Neither the cited portion nor the portion in Lange on range bets describes setting a price range. The ranges in Lange are probability ranges not price ranges. Therefore, Lange fails to teach or describe the limitations of claim 8. Furthermore, claims 9-12 are allowable at least because claim 8 from which they depend is allowable. The same argument holds for claims 28-32.

Claims 13-20 and 33-40

The Office Action has cited the same portion of Lange in support of the allegation that Lange teaches the limitations of claim 13. Yet again, Lange fails to teach or describe the limitation “wherein the contract specifies an expiration date, a price range bounded by an upper cap associated with the first investor and a lower cap associated with the second investor, a target price and dollars-per-tick,” recited therein. Neither the cited portion nor the portion in Lange on range bets describes setting a price range. The ranges in Lange are probability ranges. Furthermore, claims 14-20 are allowable at least because claim 13 from which they depend or ultimately depend is allowable. The same argument holds for claims 33-40.

Therefore, having rebutted each of the objections and rejections in the Office Action, Applicant respectfully submits that the application is ready for allowance, which is respectfully requested.

Conclusion

Claims 1-40 are believed to satisfy all of the criteria for patentability and are in condition for allowance. An early indication of the same is therefore kindly requested.

No fees beyond the extension of time fees are believed to be due in connection with this Amendment. However, the Director is authorized to charge any additional fees that may required, or credit any overpayment, to Dechert LLP Deposit Account No. 50-2778 (**Order No. 36721-001US (346359)**)).

Respectfully submitted,

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